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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

STORM PRODUCTS, INC., a Utah corporation, Plaintiff, v. **CALIFORNIA BOWLING, LLC**, a California Limited Liability Company Defendant.	**COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION** **Case No.: 1:17cv00044-BCW** **DEMAND FOR JURY**

Plaintiff, Storm Products, Inc. ("Plaintiff"), by and through its counsel, brings this complaint against Defendant California Bowling, LLC. ("California Bowling") as follows:

PARTIES

1. Plaintiff, Storm Products, Inc. ("Storm") is a Utah Corporation having an address and principal place of business at 165 South 800 West, Brigham City, Utah, 84302.

2. Upon information and belief, Defendant, California Bowling, LLC ("California Bowling") is a California limited liability company having an address and principal place of business at 1250 S Wilson Way Unit B7, B8 Stockton, California, 95205-7054.

3. Upon information and belief, California Bowling does business as or also operates in connection with the names or terms Lord Field and Lane Masters.

JURISDICTION AND VENUE

4. This Court has both federal question and diversity jurisdiction over this matter.

5. This is a civil action for unfair competition, trademark infringement arising under the common law and the Lanham Act, and in particular, 15 U.S.C. §§ 1114 and 1125 as well as deceptive trade practices under Utah law. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a) and (b) and 15 U.S.C. § 1121(a).

6. This court may assert supplemental jurisdiction over claims under the common law of the State of Utah pursuant to 28 U.S.C. §1338(b) and §1367(a).

7. This Court has diversity jurisdiction in this matter pursuant to 28 U.S.C. §1332(a) because the amount in controversy exceeds $75,000.00 and the parties are citizens of different states.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

10. This Court has personal jurisdiction over California Bowling under Utah Code Ann. §78B-3-205 by virtue of the fact that, upon information and belief, California Bowling, either directly or through licensees, agents or other corporate relations, regularly transacts business within the State of Utah, contracts to supply goods in the State of Utah, and as described in this Complaint has caused injury to Storm within the State of Utah.

BACKGROUND

11. Plaintiff, Storm Products, Inc. (hereinafter "Storm"), develops, manufactures, markets, and sells bowling balls and bowling accessories.

12. Upon information and belief, California Bowling directly or through licensees or other corporate relations, is a direct competitor to Storm, and also develops, manufactures, markets, and sells bowling balls and bowling accessories.

13. Storm is the owner of incontestable United States Trademark Registration No. 1,857,798 (hereinafter, "the '798 Registration"), registered October 11, 1994, for the mark STORM for use bowling balls. A true and correct copy of the Certificate of Registration and recordation of name change is attached hereto as Exhibit 1.

14. The '798 Registration remains active, valid and enforceable.

15. The '798 Registration has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. §1065.

16. Storm has also used the phrase and mark LIGHTS OUT on bowling balls.

17. Since its first use, Storm has continuously used the mark STORM in connection with bowling balls and other bowling accessories. Through this use, Storm has developed

goodwill in its STORM mark. The mark STORM has always been associated with quality bowling products.

18. Storm has developed common law trademark rights in the STORM mark through its continuous use of the mark since at least 1991.

19. Since 1991, Storm has continuously used the mark STORM in connection with the bowling balls and bowling products. Through this use, Storm has amassed substantial goodwill in its STORM mark for its bowling balls and bowling products. Since 1991, the mark STORM has been associated with high quality bowling products.

20. The STORM mark is prominently displayed on bowling balls and throughout Storm's website, and advertising materials in connection with a trademark notice.

21. Storm has extensively used the STORM mark in the United States in connection with advertising, marketing and promoting its goods and services. Storm has made significant efforts to advertise, market and promote STORM in the United States and, as a result, the mark has become well recognized by consumers as distinctive symbols of Storm's goodwill. Storm is one of the largest sellers of high-end bowling balls in the United States and is particularly well known among bowlers and purchasers of bowling balls and bowling products.

22. Upon information and belief, sometime in early 2017, California Bowling began an advertising campaign to promote a new bowling ball. The advertisement strongly suggests that the bowling ball is associated with Storm:

Welcome to Lane Maste
Secure https://www.lane-masters.com
The Storm Has Rolled In.. Get The Black Blizzard and Turn The Lights Out On The Competition!!
Available Now in The Products Store
A STORM IS ROLLING IN
BLACK BLIZZARD
LIGHTS OUT FOR THE COMPETITION
COMING FEBRUARY 1, 2017
BLIZZARD BLACK
COLOR: BLACK
CORE: KORRUPT HD
COVERSTOCK: BLACK PEARL
FINISH: 1000 GRIT SANDED & FACTORY POLISH
RG: 2.489
DIFF: 0.051
MASS BIAS: 0.022
WEIGHT: 12-16 LBS
#LORDFIELD #BLACKBLIZZARD
For more information email staff@lfbowling.com or visit www.lane-masters.com
CALIFORNIA BOWLING, LLC
1250 S. WILSON WAY 7B-8B
STOCKTON, CA 95205
209-479-7034
LORD FIELD
ALL FOR BOWLING
www.lordfield.co.kr/82-31-339-8989
www.facebook.com/lordfield.bowling
YouTube
Ball Chart Spreadsheet

23. This advertisement constitutes a deliberate attempt to trade on the good will of Storm by using, in a prominent way, the term STORM in connection with a new bowling ball. Additionally, to make the deception worse, California Bowling uses the name and mark of a recent bowling ball sold by Storm, "LIGHTS OUT."

24. California Bowling's use of STORM in connection with bowling balls constitutes an infringement of Storm's trademarks and wrongly suggests that California Bowling's product is associated with Storm. Storm seeks, among other things, an injunction enjoining California Bowling's wrongful and unlawful use of the STORM mark for bowling products and seeks damages for the harm California Bowling has already caused.

25. California Bowling's continuous willful, intentional, and unauthorized use of STORM constitutes an infringement of Storm's trademark rights. California Bowling should not be permitted to trade off of the STORM brand, which is protected by the '798 Registration. Storm's STORM trademark has also acquired goodwill and consumer recognition in the bowling industry. Similarly, the LIGHTS OUT phrase is still associated with Storm. California Bowling's use of STORM and LIGHTS OUT directly and unfairly competes with Storm and constitutes an intentional effort to trade on Storm's good will.

26. Accordingly, California Bowling should be preliminarily and permanently enjoined from using the advertisement in question and from using the STORM and LIGHTS OUT terms in a manner which is likely to confuse or mislead consumers in connection with bowling balls or bowling products or related products or services. In addition, California Bowling is liable for damages caused by its conduct.

COUNT I

TRADEMARK INFRINGEMENT - VIOLATION OF SECTION 32 OF THE LANHAM ACT, 15 U.S.C. § 1114(1)

27. Storm realleges and incorporates by reference paragraphs 1 through 26 of this Complaint, as if fully set forth herein.

28. California Bowling's use of Storm's STORM mark in connection with the sale, provision and/or advertising for bowling balls and related products is confusingly similar to Storm's use of its STORM mark for the same products. While California Bowling uses the term STORM as part of a phrase, its use in a prominent fashion in its advertisement for a new bowling ball is calculated to mislead consumers and will lead to consumer confusion. Therefore,

California Bowling's use of the STORM mark in connection with the sale, provision and/or advertising of bowling balls as it does in the referenced ad places these marks in the same channels of trade as the services offered under Storm's STORM mark and is likely to continue to cause confusion, or to cause mistake, or to deceive consumers.

29. California Bowling's use of the STORM mark in association with advertising for bowling balls is confusingly similar to Storm's STORM mark and is likely to cause confusion as to the source of the products. By confusing and misleading consumers as to the origin of its goods, California Bowling has infringed the rights of Storm.

30. Section 32 of the Lanham Act, 115 U.S.C. §1114(1)(a), provides, in pertinent part that "[a]ny person who shall, without the consent of the registrant – use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . . shall be liable in a civil action by the registrant. . . ."

31. California Bowling's use of the STORM mark in connection with bowling balls is an infringing use in interstate commerce of a reproduction, counterfeit, copy or colorable imitation of Storm's STORM mark. California Bowling's sale, offering for sale, provision or advertising of products under Storm's mark, or any marks similar thereto, causes and is likely to continue to cause confusion or mistake or to deceive the public as to the services or sponsorship of goods offered in violation of 35 U.S.C. §1114(1).

32. As a direct and proximate result of California Bowling's infringement, Storm has been and is likely to continue to be substantially injured in its business, including its goodwill and reputation, resulting in lost revenues and profits and diminished goodwill.

33. Upon information and belief, California Bowling has acted willfully and wantonly with intent to injure Storm.

34. Storm is being damaged by the wrongful actions of California Bowling in an amount to be established at trial, and that includes all of California Bowling's profits and all of Storm's damages, including its lost profits. Storm is also entitled to punitive damages in amount not less than three times actual damages.

35. Storm is being irreparably injured by the unlawful acts of California Bowling. Storm has no adequate remedy at law. Therefore, Storm is entitled to a preliminary and permanent injunction prohibiting California Bowling from further use of Storm's STORM mark or any term confusingly similar in its advertising, marketing or promotion of bowling balls and bowling products.

36. This case is exceptional within the meaning of 15 U.S.C. § 1117(a) and Storm is entitled to recover its attorneys' fees and costs.

COUNT II

FEDERAL UNFAIR COMPETITION—FALSE DESIGNATION OF ORIGIN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)

37. Storm realleges and incorporates by reference paragraphs 1 through 36 of this Complaint, as if fully set forth herein.

38. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part that "[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation . . . or as to the origin, sponsorship, or approval of . . . goods [or] services . . . shall be liable in a civil action . . . ."

39. The acts of California Bowling in marketing, promoting, and offering bowling balls using Storm's STORM mark or confusingly similar marks, as well as its use of the mark LIGHTS OUT constitutes:

a) a false designation of origin;

b) a false and misleading description of fact; and

c) a false and misleading representation of fact

that caused and is continuing to cause and is likely to cause and continue to cause confusion and mistake and to deceive as to the affiliation of California Bowling's business with Storm's established business, and to cause or likely cause confusion and mistake and to deceive consumers into believing that Storm sponsors or approves of the goods that California Bowling provide, in violation of 15 U.S.C. § 1125(a).

40. As a direct and proximate result of California Bowling's unfair competition, Storm has been and will be substantially injured in its business, including its goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill.

41. California Bowling's on-going acts of infringement in violation of 15 U.S.C. § 1125(a) are malicious, fraudulent, willful, and deliberate.

42. California Bowling's ongoing acts of infringement in violation of 15 U.S.C. § 1125(a) have inflicted irreparable harm on Storm. Therefore, Storm is entitled to an injunction prohibiting California Bowling from further use of the terms STORM and LIGHTS OUT, mark or any confusingly similar terms in its advertising, marketing or promotion of bowling balls and bowling products.

43. Storm has no adequate remedy at law because Storm's STORM mark is unique and represents to the public Storm's identity, reputation, and goodwill, such that damages alone cannot fully compensate Storm for California Bowling's misconduct.

44. Unless enjoined by the Court, California Bowling's will continue to compete unfairly with Storm. The resulting irreparable injury to Storm's business identities, goodwill, and reputation requires injunctive relief to prevent California Bowling's continued unfair competition, and to ameliorate and mitigate Storm's injuries.

45. As a result of California Bowling's unfair competition, California Bowling owes damages, restitution, and disgorgement of profits, in an amount unknown at this time to Storm, and which amount cannot be ascertained without an accounting of the receipts and disbursements, profit and loss statements, and other financial materials, statements and books from California Bowling.

46. This case is exceptional within the meaning of 15 U.S.C. § 1117(a) and Storm is entitled to recover its attorney's fees and costs.

COUNT III

DECEPTIVE TRADE PRACTICES
(Utah Consumer Sales Practices Act UCA § 13-11-1 *et seq.*)

47. Storm realleges and incorporates by reference paragraphs 1 through 46 of this Complaint, as if fully set forth herein.

48. California Bowling's use of the STORM and LIGHTS OUT terms in connection with its advertising and promotion for bowling balls is confusingly similar to Storm's use of STORM and LIGHTS OUT for identical and similar goods. California Bowling's use of the terms in connection with the sale, advertising and promotion of bowling balls and related products occurs in the same or similar channels of trade as the goods offered by STORM in connection with the STORM and LIGHTS OUT terms.

49. California Bowling's is improperly trading on the goodwill Storm has earned with the purchasing public for bowling balls and related goods by causing the public to be confused as to the sponsorship or affiliation of its products.

50. California Bowling's conduct constitutes unfair methods of competition and unfair or deceptive acts or practices as defined in Utah Code § 13-11-4.

51. Storm has been damaged by California Bowling's in an amount to be set at trial which amount is no less than California Bowling's profits and Storm's lost profits. Storm is also entitled to punitive damages in an amount sufficient to punish California Bowling for its reprehensible, malicious, deceitful, unconscionable, and reckless behavior.

52. Storm is entitled to injunctive relief and to recover its attorney fees and costs.

COUNT V

COMMON LAW TRADEMARK INFRINGEMENT

53. Storm realleges and incorporates by reference paragraphs 1 through 52 of this Complaint, as if fully set forth herein.

54. Beginning at least as early as 1991, Storm developed common law rights throughout the United States in the mark STORM for use with, at least, bowling balls, and related goods and services.

55. California Bowling's use of STORM is identical and confusingly similar to Storm's mark STORM and is likely to cause confusion as to the source of bowling balls. By creating a likelihood of confusion as to the source of its goods, California Bowling's has infringed the common law rights of Storm.

56. Upon information and belief, California Bowling's has acted willfully and wantonly with intent to injure Storm.

57. Storm is being damaged by the wrongful actions of California Bowling in an amount to be established at trial, and that includes all of California Bowling's profits and all of Storm's lost profits. Storm is also entitled to punitive damages in an amount sufficient to punish California Bowling for their reprehensible, malicious, deceitful, unconscionable, and reckless behavior.

58. Storm is being irreparably injured by the unlawful acts of California Bowling. Storm has no adequate remedy at law. Therefore, Storm is entitled to an injunction prohibiting California Bowling from further use of STORM or any term confusingly similar.

59. Storm is entitled to recover its attorney fees and costs.

COUNT VI

COMMON LAW UNFAIR COMPETITION

60. Storm realleges and incorporates by reference paragraphs 1 through 59 of this Complaint, as if fully set forth herein.

61. California Bowling's use of STORM is identical and confusingly similar to Storm's STORM mark.

62. California Bowling's use of LIGHTS OUT is identical to a mark Storm has used on bowling balls.

63. California Bowling is improperly trading on the goodwill Storm has earned with the purchasing public for hotel and motel services by causing the public to be confused as to the sponsorship or affiliation of California Bowling's products.

64. California Bowling's conduct is unlawful.

65. Upon information and belief, California Bowling has acted willfully and wantonly with intent to injure Storm.

66. Storm is being damaged by California Bowling's wrongful actions in an amount that is not yet determined, but is not less than California Bowling's profits and Storm's lost profits. Storm is entitled to punitive damages in an amount sufficient to punish California Bowling for their reprehensible, malicious, deceitful, unconscionable, and reckless behavior.

67. Storm is entitled to recover its attorney's fees and costs pursuant to UCA 13-5a-103.

PRAYER FOR RELIEF

WHEREFORE, Storm respectfully prays for the following relief against California Bowling:

A. The entry of a temporary and permanent injunction enjoining California Bowling, its officers, directors, shareholders, agents, servants, employees, and those persons or entities in active concert or participation with them:

1. From using the advertisement referenced in this Complaint which uses makes reference to the terms STORM and LIGHTS OUT and from using any other advertisement that implies a connection with a California Bowling ball or product to Storm by including terms that are Storm trademarks.

2. Requiring California Bowling to promptly eliminate any and all advertising using STORM and/or LIGHTS OUT or any other confusingly similar designations, including in connection with the above-referenced goods, from all service advertising, the Internet, search engines, web sites, all media, including, but not limited to, newspapers, flyers, coupons, promotions, indoor and outdoor signs, and mass mailings, all at California Bowling's cost;

3. From passing off any of the products or services they offer, as those of Storm through the use of terms that are Storm trademarks or are terms associated with Storm products, including STORM and LIGHTS OUT;

4. From causing a likelihood of confusion or misunderstanding as to the source, sponsorship or affiliation of the businesses, products or services that offer by using identical or similar marks;

5. Requiring California Bowling to file with the Court and to serve upon Storm's counsel within ten (10) days after entry of any injunction or order issued herein, a written report, under oath, setting forth in detail the manner in which they have complied with such injunction or order.

B. Entry of an Order:

1. Awarding to Storm all damages caused by California Bowling;

2. Awarding Storm all of California Bowling's profits derived from California Bowling's use of STORM in the course of business;

3. Finding that California Bowling have acted knowingly, willfully, wantonly, reprehensibly, maliciously, deceitfully, unconscionably, and recklessly and awarding to Storm treble damages and/or such other punitive or exemplary award allowed by law;

4. Awarding Storm costs and expenses, including reasonable attorneys' fees, incurred by Storm in connection with this action as provided for by statute or by law; and

5. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Storm hereby demands a trial by jury in this action for all issues that are triable to a jury.

DATED this 21st day of March, 2017.

/s/ H. Dickson Burton
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